

COMMISSION DECISION**of 17 July 2002****on the aid scheme implemented by Italy in order to reduce the number of single-hull tankers older than 20 years in the Italian tanker fleet***(notified under document number C(2002) 2437)***(Only the Italian text is authentic)****(Text with EEA relevance)**

(2002/868/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above and having regard to their comments⁽¹⁾,

Whereas:

1. PROCEDURE

(1) By letter No 542 of 15 January 2001, registered on 18 January 2001 as SG(2001)A/787, Italy notified, in accordance with Article 88(3) of the EC Treaty, a draft aid scheme to speed up the elimination of single-hull tankers 20 years of age or older. By letter of 23 February 2001, registered on the same day, Italy sent details of the current status of the draft law. By letter of 6 March 2001, the Commission asked the Italian Government to supply further information, which was received by letter No 5786 of 4 May 2001, registered on 7 May 2001 as SG(2001)A/5870. Thereafter, Italy provided additional information by letter No 8665 of 5 July 2001, registered on 10 July 2001, by letter of 19 July 2001, registered on 23 July 2001, by letter of 3 September 2001, registered on 4 September 2001, by letter of 25 September 2001, registered on 9 October 2001 (as SG(2001)A/11100), by letter of 24 October 2001, registered on 24 October 2001 (as SG(2001)A/11814), and by letter of 22 November 2001, registered on 27 November 2001 as No 14632.

(2) By Decision of 20 December 2001, notified to the Italian Government by letter dated 28 December 2001 (SG(2001) D/293162), the Commission initiated the procedure laid down in Article 88(2) of the Treaty in respect of the present aid. The procedure has been registered under C 97/2001.

(3) The Commission Decision to initiate the formal investigation procedure has been published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid.

(4) Italy forwarded comments to the Commission by letter of 25 January 2002, registered on 31 January 2002. A further letter with additional information and commitments was sent on 3 May 2002.

(5) Within the time frame indicated in the publication, the Commission received comments from the following interested parties: the Comité Central des Armateurs de France by letter of 21 March 2002, the Swedish shipowners' association by letter of 21 March 2002, the Chamber of Shipping by letter of 21 March 2002, Norges Rederiforbund by letter of 21 March 2002, the Norwegian Royal Ministry of Trade and Industry by letter of 22 March 2002, Danmarks Rederiforening by letter of 21 March, and finally Mediterranea di Navigazione by letter of 4 March 2002. The Commission also received comments from Ermewa Maritime by letter of 4 April and Confitarma by letter of 25 March, sent after the expiry of the formal deadline for reaction of 22 March 2002.

⁽¹⁾ OJ C 50, 23.2.2002, p. 7.

⁽²⁾ See footnote 1.

2. DETAILED DESCRIPTION OF THE AID

2.1. The aid scheme

- (6) The aid scheme is intended to promote and expedite the ban on single-hull ships in Italy and is targeted at owners of oil and chemical tankers. It is based on Articles 3, 4 and 5 of Law 51/2001 (*Disposizioni per la prevenzione dell'inquinamento derivante dal trasporto marittimo di idrocarburi*) designed to prevent accidents at sea involving tankers, which was published on 7 March 2001 and entered into force on the same day. The Italian authorities have, however, undertaken not to pay any aid before obtaining authorisation from the Commission.

2.2. Background

- (7) The sinking on 12 December 1999 of the oil tanker Erika, a 25 year-old single hull, aroused great public concern about the safety of maritime transport. The disaster highlighted the potential environmental and safety risks inherent in old, poorly maintained vessels and the consequent need to strengthen and harmonise maritime safety standards and rules on the inspection of vessels in ports. In the circumstances, the Italian authorities, like the Commission, took the view that they should, if necessary, go beyond the international rules existing or planned at that time.
- (8) Italy regarded the ships used for cabotage services between Italian ports as representing the greatest source of risk to the environment and to safety. The situation in Italy at that time gave grounds for particular concern as 54 % of oil or oil products were not shipped either in double-hull tankers or in single-hull tankers complying with the highest standards⁽³⁾. Moreover, Italy was particularly involved in the Erika case as the company operating the wrecked tanker was Italian, even though it was sailing under the flag of a third country, and, having taken its cargo on board in Dunkirk, France, the vessel was heading for the Italian port of Milazzo.
- (9) Following the sinking of the Erika, the Italian Minister for the Environment announced his intention to ban single-hull ships from the majority of Italian ports, taking up the measures applied in the port of Venice since December 1999. Debates on improving safety and on the present aid scheme, which was formally brought

before the Italian Parliament in March 2000, enabled the Italian Government to come up with a solution more flexible than the total ban, to which there were objections at international level. The International Maritime Organisation (IMO) and Community later both passed legislation which went further, in some respects, than the Italian measures.

2.3. The environmental and safety context

Safety legislation

- (10) In March 2000, the Commission presented a Communication on the safety of the seaborne oil trade⁽⁴⁾. The Commission presented a second Communication with an additional set of proposals in December 2000⁽⁵⁾. In the Communication of March 2000, the Commission proposed three measures to be adopted in the short term:
- more stringent in-port inspections of ships calling at Community ports,
 - closer supervision of classification societies, and
 - accelerating the timetable, which had previously been agreed at the IMO, for banning single-hull oil tankers from EU waters.
- (11) The third measure was motivated by the statistical evidence of increased accident rates for older ships and by the need to align with the American Oil Pollution Act of 1990 in order to prevent the single hull tankers banned from American waters after 2005 starting to operate in European waters.
- (12) It is in the Community's interest to adopt measures to ensure that oil tankers entering ports and offshore terminals under Member State jurisdiction and, oil tankers flying the flags of Member States comply with Community legislation. Such measures are aimed at reducing the risk of accidental oil pollution in European waters.

⁽³⁾ SBT/PL: double-hull tanker, segregated ballast tanks in protective locations.

⁽⁴⁾ Erika I: Communication from the Commission to the European Parliament and the Council on the safety of the seaborne oil trade, COM(2000) 142 final, 21 March 2000.

⁽⁵⁾ Erika II: Communication from the Commission to the European Parliament and the Council on a second set of Community measures on maritime safety following the sinking of the oil tanker Erika, COM(2000) 802 final, 6 December 2000.

(13) The final accelerated schedule (hereinafter referred to as 'the IMO compromise')⁽⁶⁾ was agreed at the International Maritime Organisation (IMO) in April 2001.

(14) Although, on an exceptional basis, the IMO compromise allows newer single-hull ships complying with certain technical specifications to continue operating until the 25th anniversary of their delivery, EU Member States formally announced that after 2015 they would not allow single-hull tankers to enter their ports.

(15) As a result, the Community adopted Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers and repealing Council Regulation (EC) No 2978/94⁽⁷⁾. The regulation applies as of 1 September 2002 and transposes Community objectives to prevent major biological and environmental damage caused by shipping accidents involving old ships and in particular in relation to those carrying dangerous and potentially polluting goods.

(16) Regulation (EC) No 417/2002 prevents single-hull oil tankers from entering EU ports and operating under EU flags⁽⁸⁾. It covers three categories of tankers:

- Category 1 oil tankers, commonly known as pre-MARPOL tankers⁽⁹⁾, are to be gradually phased out between 2003 and 2007 (vessels without CAS will be banned from 2005),
- Category 2 oil tankers, commonly known as MARPOL tankers⁽¹⁰⁾, will be gradually phased out between 2003 and 2015 (vessels without CAS will be banned from 2010),

— Category 3 oil tankers, with deadweights of 5 000 tons and above but less than the tonnage specified for Category 1 and 2 tankers, will be gradually phased out between 2003 and 2015.

Environmental considerations

(17) Article 6 of the EC Treaty stipulates that environmental protection requirements must be integrated into the definition and implementation of Community policy, including Community transport policies and activities.

(18) The Communication from the Commission to the Council and the European Parliament 'Enhancing Euro-Mediterranean cooperation on transport and energy'⁽¹¹⁾ highlights the need to improve the safety of shipping. It particularly mentions the transportation of oil and chemicals, and notes that this is 'all the more acute in the Mediterranean, an enclosed sea with a fragile ecological balance'.

2.4. Objective of the aid

(19) The objective of the aid scheme is to ensure that maritime transport in Italy complies with the most stringent safety and environmental protection standards. The aid scheme promotes the scrapping of Italian-flagged single-hull tankers more than 20 years old well in advance of the IMO timetable confirmed by Regulation (EC) No 417/2002. It will cover all tankers older than 20 years on 31 December 1999 and thus considerably brings forward the legislative timeframe of the Community legislation. In addition, of the total 67 tankers eligible under the aid scheme, it will eliminate 26 which are not covered by either Community or international legislation on the phasing-out of tankers.

(20) The aid measure forms an integral part of a law aimed at preventing incidents at sea involving tankers and limiting the consequences of accidents, which can cause enormous harm to the marine environment. The law moreover steps up inspections of oil tanker shipping, bearing in mind the delicate ecological balance of the Mediterranean Sea. The incentive scheme is clearly targeted at reducing the numbers of older single-hull tankers, the category which poses the greatest potential risk of environmental damage in Italian waters and elsewhere. The scheme is aimed at, and to a large extent succeeds in, reducing the number of these generally low-cost tankers, in particular those with deadweight tonnage of less than 30 000 tons used for traffic between Italian ports.

⁽⁶⁾ Regulation 13G of Annex I of MARPOL 73/78, as amended in 2001 by Resolution MEPC.95(46).

⁽⁷⁾ OJ C 64, 7.3.2002, p. 1.

⁽⁸⁾ Category 1 and 2 oil tankers may only continue to operate after 2005 and 2010 respectively subject to compliance with a condition assessment scheme (CAS) introducing a more stringent inspection procedure. The Italian authorities have announced that they will not use the CAS procedure for oil tankers flying the Italian flag. Nonetheless, the three categories will be subject to the 2005, 2010 and 2015 deadlines.

⁽⁹⁾ Oil tankers of 20 000 tons deadweight and above, equipped to carry crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30 000 tons deadweight and above, equipped to carry oil other than the above, which DO NOT COMPLY with the requirements for tankers with regard to protectively located segregated ballast tanks.

⁽¹⁰⁾ Oil tankers of 20 000 tons deadweight and above, equipped to carry crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30 000 tons deadweight and above, equipped to carry oil other than the above, which COMPLY with the requirements for tankers with regard to protectively located segregated ballast tanks.

⁽¹¹⁾ COM(2001) 126 final, 7 March 2001, with particular reference to point 2.3.3.

- (21) There is no doubt but that single-hull tankers pose the greatest risks of pollution if involved in accidents at sea and that they are more worn out than other vessels because of their relative age. Italy considers that speeding up the phasing out of single-hull tankers helps to achieve the objective of rendering Community waters safer.
- (22) Italian Law 51/2001 on the aid scheme is one of several measures designed to improve safety and protection of the marine environment. In addition to the scrapping of obsolete tankers, it introduces other safety measures, including measures relating to the increased use of maritime traffic systems (VTS) and delegating powers to the Minister for Transport and Shipping in order to, if necessary, prevent merchant vessels shown to pose a risk to the safety of shipping and the marine environment from transiting via or remaining in Italian territorial waters. In addition, an agreement was signed on 1 June 2001 between the Italian Government and industrial and environmental associations on voluntary restrictions upon the use of single-hull tankers.

2.5. Budget

- (23) Italy is setting aside a maximum EUR 5,16 million (ITL 10 000 million) per year for a period of 15 years, amounting to a total budget of EUR 77,4 million including interest.
- (24) Ship owners will receive EUR 129,11 (ITL 0,25 million)⁽¹²⁾ per deadweight ton⁽¹³⁾ up to a maximum deadweight tonnage of 30 000 tons. The maximum possible aid for a single ship would therefore be EUR 3 873 427 (ITL 7 500 million). The maximum aid that a single ship owner may receive depends on the number of ships owned which fulfil the qualifying criteria.
- (25) The Ministry of Infrastructure and Transport administers the aid. The aid will be granted in form of loans from Italian or European credit institutions in the amount of the aid direct to the beneficiaries. Once the aid is granted, recipients have no further obligations to the banks, as the loans will be redeemed by the State using resources from the general State budget⁽¹⁴⁾.

2.6. Duration

- (26) The scrapping of the ship needs to start between 1 January 2000 and 31 December 2002, and has to be completed within six months thereafter.
- (27) The aid will be payable as of 2001. Shipowners benefit immediately once the demolition has been completed and the administrative procedure authorising the raising of loans has been finalised. Thereafter, as described above, the individual loan contracts are binding upon the State. The Italian Government confirms that, due to its commitment to the Commission to suspend any payment, it has not as yet taken on any such loans.

2.7. Beneficiaries

- (28) The aid scheme is limited to shipping companies which own single-hull tankers with deadweight tonnage of more than 1 000 tons, equipped to transport crude oil or oil or chemical products. Such vessels must have become the property of the company prior to 30 September 2000, and must have been entered in the Italian shipping registers before that date⁽¹⁵⁾. The aid scheme also applies to vessels which have been in service for more than 20 years on 31 December 1999, and which are sold for scrap or whose scrapping is arranged in accordance with the time constraints.
- (29) At the end of 1999 and the beginning of 2000, immediately after the Erika disaster, the Italian authorities working with industry initially identified 72 ships, belonging to 35 companies, which may be eligible for aid, provided that they are scrapped in line with the stipulated conditions. The ships can be classified by age and size as follows:

⁽¹²⁾ Fixed exchange rate: EUR 1 = ITL 1 936,27.

⁽¹³⁾ Deadweight tonnage: the authorised carrying capacity of a ship when fully loaded. The maximum weight of cargo, stores, fuel and water that may be loaded on a vessel to bring it to its summer marks.

⁽¹⁴⁾ The relevant payments are to be made at six-monthly intervals on 30 June and 31 December of each year. The loan contracts must provide for a payment plan of at most 15 years, at a rate of interest fixed by decree of the Treasury Minister and published in the Official Gazette of the Italian Republic, pursuant to Law 431 of 31 December 1991 as amended by Law 413 of 30 November 1998. This arrangement is designed to spread the financial burden of the aid scheme over a period longer than a few financial years.

⁽¹⁵⁾ Article 143 of the Italian Shipping Code (*Requisiti di nazionalità dei proprietari di navi italiane*) stipulates that, in order to be entered in the Italian shipping registers, vessels must either:

- (a) be more than 50 % owned by natural or legal persons or entities from Italy or other EU Member States; or
- (b) if owned by non-Community natural or legal persons or entities who are directly responsible for operating a vessel via a permanent organisation located on Italian territory, management must be delegated to a natural or legal person of Italian or other EU nationality, domiciled at the ship's place of registration, who directly controls and assumes full responsibility for the operation of the vessel with regard to the administration and to third parties.

Deadweight tonnage	Age of the vessel (in years)		
	25 to 30	25 to 30	More than 30
1 000 < DWT < 5 000	8	11	12
5 000 < DWT < 30 000	9	11	3
30 000 < DWT	14	5	0
Total	31	27	15

- (30) Of the 72 tankers originally identified as eligible for aid, 59 were registered in the Italian national shipping register and were engaged in cabotage (they represent 51 % of the total 115 tankers entered in the Italian shipping register). Twenty of the oil tankers identified as eligible for the aid are registered in the Italian International Register and are mainly engaged in international traffic from and to Italian ports, although some are also engaged in cabotage services. These internationally operating ships represent less than 7 % of the total Italian tanker fleet of 205 ships and around 1 % of the total Community tanker fleet of 1 211 ships.
- (31) The latest information provided by the Italian authorities on the situation in 2002 was that 28 of these tankers had already been scrapped by 30 March 2002⁽¹⁶⁾, thus eliminating nearly half of the high-risk ships from the market. Another two tankers are currently in the process of being scrapped. In the meantime, five tankers have been sold and are therefore no longer eligible for the aid. There have been delays in the scrapping of the remaining 37 ships in view of uncertainties regarding the legal status of the scheme and pending the outcome of the Commission's assessment.
- (32) There is no requirement for a ship to be scrapped in any specific shipyard.

2.8. Expected effect of the aid

- (33) Single-hull tankers more than 20 years old will be and have been removed from the Italian cabotage market in advance of obligations to do so under IMO and Community legislation. At least 28 tankers have already been scrapped, effectively reducing environmental risks and increasing the safety of shipping and, there are plans to scrap more in the near future. IMO and Community legislation require only 14 of the 67 tankers to be taken out of operation by 1 January 2003. Twenty-one tankers had already been scrapped before the Commission decision to open the formal investigation procedure (in December 2001), which brought operations to a virtual standstill.

⁽¹⁶⁾ 12 vessels in 2000, 11 in 2001 and 5 in 2002.

- (34) The vast majority of the remaining 37 tankers eligible for the aid have a deadweight tonnage of less than 10 000 tons. There is no requirement for more than half of the vessels in this category to be removed from the market before 2015. This is due to the fact that the aid measure also promotes the removal of smaller tankers, of less than 5 000 deadweight tonnage, whose continued operation is not regulated by either Community legislation or any of the aforementioned international rules.

2.9. Conditions, eligible costs, aid intensity, etc.

- (35) The aid amounts are intended as compensation for the revenue lost by a shipping company due to the early withdrawal of a tanker from service. Since the objective of the law is to reduce the risks inherent in the carriage of polluting and dangerous goods in single-hull tankers, the aid amount is directly proportional to deadweight tonnage, which represents the loading capacity of a ship. The Italian authorities maintain that a link is thus established between the amount of the aid and the amount of high-risk products carried in single-hull tankers (and thus any potential damage deriving from that) thereby avoided. The Italian authorities also maintain that the amount of aid has to be enough to discourage shipowners from seeking possible alternative revenue by selling the vessels to other markets in or outside the European Community. The Italian aid scheme in question consistently insists that the ship be withdrawn definitively from service, without fail.

Calculation of the aid

- (36) The amount of the aid is calculated on the basis of the revenue that might be derived from an eligible single-hull tanker over a period of one year⁽¹⁷⁾. For example, a single-hull tanker with a deadweight tonnage of 30 000 tons aged between 25 and 28 years could currently be expected to earn approximately EUR 17 765 (USD 15 500)⁽¹⁸⁾ per day based on its operating approximately 330 days a year. The cost, principally the costs of crew, maintenance and repairs, fuel and other minor expenses such as insurance (since the full cost of a ship more than 20 years old would already have been written off), are currently estimated at approximately EUR 5 157 (USD 4 500) a day, 365 days a year. Therefore:

⁽¹⁷⁾ Further information from the Italian authorities indicates that the intention was to make the amount of aid proportional to the cost of the potential damage that had been avoided.

⁽¹⁸⁾ Rate of exchange as at the second quarter of 2001: EUR 1 = USD 0,872518.

- revenue: EUR 17 765 × 330 days = EUR 5 862 450,
- costs: EUR 5 157 × 365 days = EUR 1 882 305.

Annual return is therefore approximately EUR 3 980 145, or ITL 7 706 million⁽¹⁹⁾. Around 20 tankers are currently eligible for the maximum aid theoretically possible for a single vessel, EUR 3 873 427 (ITL 7 500 million).

- (37) The Italian authorities have preferred to base the calculation on deadweight tonnage rather than on a sliding scale according to the age of the vessel, since age is not the sole criterion determining a ship's safety and environmental credentials. The Italian authorities regard as equally important to consider criteria such as the type and technical specification of the vessel, and its state of repair.
- (38) The aid amount thus calculated is not subject to any preferential fiscal treatment.

Conditions governing the scrapping of vessels

- (39) In order to be eligible for aid, the shipowners whose ship(s) were originally identified as potential beneficiaries must apply to the Ministry of Infrastructure and Transport within three months of the date on which the demolition works begin. The application must identify the ship concerned, provide documentary proof of ownership and of the scrapping of the vessel (for instance, the contract of sale for demolition or simply for demolition, and certification from the competent maritime or consular authority authorising the demolition).
- (40) In order to obtain definitive payment of the aid, shipowners must, within six months of the date on which the demolition began, submit to the Ministry of Infrastructure and Transport a certificate from the maritime or consular authority confirming the dates when the demolition began and was completed. The six-month period runs from the date when the law enters into force in the case of initiatives launched prior to that date.

Accompanying obligations

- (41) Under Article 4 of Law 51/2001, as of the date on which the aid is awarded, shipping companies benefiting from the aid scheme are barred from using single-hull tankers more than 20 years old for national cabotage, except for

the Italian-flagged ships already owned or operated by these companies. If this provision is not respected, the aid must be paid back plus interest and penalties.

- (42) Law No 51/2001 also requires that, as of the date when Articles 3, 4 and 5 are applied, no single-hull tankers equipped to transport crude oil, oil or chemical products may be entered in the Italian national shipping registers if they are more than 20 years old.
- (43) The aid is also subject to compliance with conditions on future investment. The aid measure stipulates that the recipient company must reinvest an amount equivalent to the scrapping premium in its maritime business activities. This investment must be made within 18 months of the demolition being completed or of the date when the relevant articles of Law 51/2001 entered into force, whichever comes first. However, the scrapping premium is not related to this new investment, being merely compensation for the loss of revenue suffered by the beneficiary for the period during which the scrapped tanker could have continued to operate.
- (44) The above conditions contained in the aid measure as originally notified already placed restrictions upon the recipients' future use of single-hull tankers more than 20 years old, quite apart from the tankers actually scrapped. However, in the aid measure as originally notified, the purchase of single-hull tankers of less than 20 years of age as replacement capacity was still an option. In the course of these proceedings, however, Italy has proposed that it undertakes to impose a further condition, ruling out single-hull tankers of any age as replacement capacity. Thus, Italy intends to require that any replacement capacity purchased by the beneficiaries of the aid measure may consist of double hull tankers only. Italy has further confirmed that the investment benefiting the maritime business of the beneficiary which is foreseen in the law may also be for specific training or any other projects or assets meeting that objective. If the aforementioned conditions are not fulfilled, the aid must be paid back plus interest and penalties.
- (45) These conditions attached to the granting of the aid incorporate the terms agreed between the Italian authorities and the shipping industry immediately after the sinking of the Erika.
- (46) Beneficiaries of the aid have to inform the Italian administration of the details of the investment. The Italian administration further reserves the right to carry out the necessary administrative checks, by means of inspections, to ensure that the recipient company complies with these conditions.

⁽¹⁹⁾ Rate of exchange as at the second quarter of 2001: USD 1 = ITL 2 219.

2.10. Market analysis

- (47) The Italian tanker fleet of 205 ships with a total deadweight tonnage of 3 715 073 tons represents, in terms of dwt, 9,2 % of the tankers entered in EU Member State registers (as defined in the Annex to the Community guidelines on State aid to maritime transport⁽²⁰⁾, hereinafter referred to as the 'relevant Community guidelines') and, specifically, 5 % of the Community's crude oil tankers, approximately 30 % of its tankers carrying oil products and 20 % of its chemical tankers⁽²¹⁾. The Community tanker fleet represents some 13 % of the world tanker fleet.
- (48) The official statistics for 1999 (the latest available) show that 30,1 of the 31 million tons of petrochemicals transported in the Italian cabotage market were carried by Italian-flagged vessels, a market share of 97 % in a market that has been opened to competition since 1 January 1997 pursuant to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)⁽²²⁾. The scheme also applies to a limited number of Italian-registered tankers operating on international markets but which entered or could enter Italian ports, an activity that has clearly been open to European as well as global competition for a long time.

3. THE FORMAL INVESTIGATION PROCEDURE

3.1. Grounds for initiating the procedure

- (49) The Commission decision to initiate the procedure laid down in Article 88(2) of the EC Treaty and to request clarification from the Italian authorities was the outcome of an initial examination of the notified aid scheme embodied in Law 51/2001. The law itself does not specify the type of projects, training, or assets in which the beneficiary of the aid must invest under the requirement to invest in the maritime business.
- (50) Furthermore, concern was expressed at the fact that 97 % of the ships operating in the relevant, recently opened market were Italian flagged tankers.
- (51) The Commission expressed doubts regarding the following issues in particular:
- the limitation of the aid scheme to single-hull tankers at least 20 years of age,

- the option of purchasing single-hull tankers, even if they must be less than 20 years old, as replacements, and
- the lack of clarity as to the type of investment required of the beneficiaries.

- (52) The Italian authorities were therefore asked to provide the necessary information to enable the Commission to assess whether the aid scheme was compatible with the EC Treaty. Nevertheless, the Commission did accept (see recitals 65 to 67 of that Decision) that the objectives of the aid scheme as such are in line with Community maritime policy and implement important policy guidelines intended to raise safety standards in maritime shipping.

3.2. Comments from interested parties

- (53) According to *Mediterranea di Navigazione*, *Danmarks Rederiforening*, the Norwegian Royal Ministry of Trade and Industry, *Norges Rederiforbund*, the Chamber of Shipping, the Swedish shipowners' association, *Comité Central des Armateurs de France*, and *Ermewa Maritime*:

the measure does not seem to meet the requirements for any of the exceptions provided for in the EC Treaty or in the guidelines on State aid for environmental protection. In terms of State aid policy, it constitutes a net direct subsidy to companies owning ships under the national flags of a single Member State. Such net direct subsidies are not deemed admissible under either the EC Treaty or the guidelines on State aid, except in very limited circumstances, which may include the one-off restructuring of a company or its involvement in an important project of common European interest. On the oil tanker market, however, there is overcapacity, and the aid will encourage shipbuilding, which may inflate the market;

- (54) moreover, the aid scheme distorts competition in the European and international shipping market, as beneficiaries will be able to buy new ships at a price 12 % to 15 % lower than that of their competitors. Some Member States have given advance notice of the renewal of their tanker fleets so as to comply with new international and European safety standards without the use of public funding. Because of the method used to calculate the aid, it could even benefit ships not usually used for cabotage services (30 000 dwt and more) and penalise those which are (3 000 to 15 000 tons deadweight);

⁽²⁰⁾ OJ C 205, 7.7.1997, p. 5.

⁽²¹⁾ Source: World Fleet Statistics 2000, Lloyd's Register.

⁽²²⁾ OJ L 364, 12.12.1992, p. 7.

(55) the measure may also lead to a race for scrapping subsidies, which would seriously distort competition. Furthermore, it may stand in the way of international solutions designed to boost safety or prevent pollution in the future;

(56) the comments also stress the danger that the aid might bring costs down substantially, potentially placing rival shipowning companies at a commercial disadvantage. The scheme may lead to artificially low freight rates in the Italian tanker cabotage market, creating an entry barrier for non-Italian EEA ships to the Italian cabotage market. In addition, the subsidised replacement ships (tankers or other types of vessels) may operate in other EU markets, causing distortions of competition there;

(57) the aid is not proportionate. In particular, the owners of a 30 000 ton tanker more than 20 years old will receive ten times as much as the owners of a 3 000 ton tanker, even though the ratio of their relative construction cost is approximately 3:1. Reinvestment in ships between 15 and 19 years old may lead to extremely high aid intensity, with the value of the ships actually less than the amount of the aid;

(58) alternative, more efficient and less distortive solutions to promote safe seas should have been envisaged, for example a long-term commitment to investment in crew training or technical improvement going beyond existing legislation or international agreements. One alternative would have been to increase the resources available for Italian flag and port State control activities, benefiting all tankers operating in Italian waters.

According to Confitarma:

(59) the aid measure is non-selective and is unlikely to affect trade between Member States or to distort competition between EU shipping companies. Instead, the aid scheme will considerably reduce the risk stemming from the use of older ships;

(60) in its proposal for a regulation on the accelerated phasing-in of double hull standards, the Commission stated that the replacement of single-hull ships would

probably lead to 'insufficient double-hull tonnage' causing 'increased demand arising from this proposal' which would circumvent the objection to reduce supply regarding the reduction of capacity offered;

(61) the aid measure pursues the same objectives as Community legislation (Regulation (EC) No 417/2002) and therefore clearly has to be deemed compatible with the, less stringent, Community standards, which were adopted after the aid measure entered into force;

(62) Confitarma also pointed out that, with regard to public service, Member States should be entitled to establish new safety regulations when they perceive a shortcoming in European or international rules.

3.3. Comments from Italy

(63) The Italian authorities stress that there is no contradiction between the proposed aid scheme and the IMO timetable, since the latter gives the latest possible deadline by which the ships in question should be removed. There is no reason why ships cannot be scrapped ahead of schedule. This does not constitute failure to comply with IMO commitments. The objective of environmental protection is achieved all the more effectively if ships presenting increased risk are scrapped ahead of schedule.

(64) The purpose of the aid measure is to eliminate potential risk and not to provide incentives to invest in ships. The Commission, misguided by the condition that beneficiaries must invest an amount equivalent to the aid received in their maritime business, was wrong to conclude that the aid would cause unacceptable distortions of competition.

(65) Law No 51/2001 already promotes the use of double-hull tankers since Article 4(3) stipulates that recipients of aid may not thereafter enter single-hull tankers in the national shipping registers if they are more than 20 years old.

(66) Concerning the aid intensity, the system may be regarded as sufficiently fair and in line with the environmental and safety objectives stated in the law. It is inaccurate to describe the aid as a form of operating aid because the motives of safeguarding the safety of shipping and the marine environment preclude the possibility that the aid is intended as operating aid.

(67) The aid should be considered a 'one-off' measure not likely to alter the commercial policy of a maritime shipping company. The economic effects of the aid are very short-term and will not make a company able to offer anything other than the standard commercial rates without compromising the profitability of its activities.

(68) Italy has stated its intention of promoting the opening up of the cabotage market in accordance with Council Regulation (EEC) 3577/92 of 7 December 1992. There are, in any case, no barriers to the use of EU-owned ships on the Italian cabotage market. Any advantage for the beneficiaries deriving from the aid is very limited and cannot affect the common market to an extent contrary to the common interest.

4. ASSESSMENT OF THE AID

4.1. Existence of aid within the meaning of Article 87(1) of the EC Treaty

(69) According to Article 87(1) of the EC Treaty, 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between the Member States, be incompatible with the common market.'

(70) *Transfer of State resources:* the concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by an intermediary body acting by virtue of powers conferred on it. Under this aid scheme, the amounts paid immediately and directly to the shipowners are raised by means of loans which the Italian administration undertakes to pay back over a 15-year period. The loan arrangement is thus simply an instrument by means of which the State may grant a lump sum payment to the aid beneficiary while meeting specific budgetary constraints.

(71) *Advantage:* the aid measure in question confers an advantage upon Italian owners of single hull oil tankers 20 years of age or older operating in the Italian cabotage market as well as internationally. Shipping companies operating more recent ships in the same markets do not benefit.

(72) *Selectivity:* the aid measure favours the shipping sector, in particular the maritime carriage of oil and chemicals, and is therefore selective in nature.

(73) *Effects on trade and distortion of competition:* it strengthens the position of a limited number of shipping companies in the Italian market. The possibility of scrapping essential assets while continuing to receive compensation for the revenue lost as a result of the elimination of the scrapped tonnage could place the beneficiaries at

an advantage in relation to companies established in other Member States. Since the entry into force of all the provisions of Regulation (EEC) No 3577/92 allowing free market access to almost all national markets within the EU, shipping companies compete in a liberalised market in Europe. The measure may have an effect on competition in a liberalised market.

(74) The measure in question confers an advantage upon certain undertakings, is State-financed, selective in character, affects trade between Member States and affects competition. As such, it constitutes State aid within the meaning of Article 87(1) of the EC Treaty and is incompatible with the common market, unless it can meet the requirements of the exemptions provided for in the Treaty.

4.2. Legal basis for the assessment

(75) Article 87(2) of the EC Treaty, which provides for aid having a social character, aid making good the damage caused by natural disasters or exceptional occurrences and aid granted to the economy of certain areas of the Federal Republic of Germany is not applicable in the present case.

(76) Nor is Article 87(3)(a) of the EC Treaty applicable, which provides for aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, because the measure under consideration affects the maritime industry and is not focussed on a particular region or regions.

(77) Article 87(3)(b) of the EC Treaty, which provides for aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, and Article 87(3)(d) of the EC Treaty, which provides for aid to promote cultural and heritage conservation, are not applicable to aid to the maritime transport sector.

(78) Under Article 87(3)(c) of the Treaty, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In the case in point, the Commission considers Article 87(3)(c) of the Treaty as the legal instrument which may provide an exemption.

4.3. Appraisal of the compatibility of the aid

4.3.1. *Compatibility in the light of the Community guidelines on State aid to maritime transport*

- (79) The relevant Community guidelines set out the arrangements and criteria according to which State aid may be authorised in this sector. In general terms, aid schemes should not be at the expense of other Member States' economies and must be shown not to risk distortion of competition between Member States to an extent contrary to the common interest. State aid must always be restricted to the minimum necessary to achieve its purpose and must be granted in a transparent manner. In addition, the cumulative effect of all aid granted by State authorities (including national, regional and local authorities) must always be taken into account.
- (80) The relevant Community guidelines define the State aid schemes which may be introduced to support the maritime interests of the Community. Such aid should have the following objectives:
- safeguarding employment within the Community (for on-board and on-shore staff),
 - preserving maritime know-how in the Community and developing maritime skills,
 - improving safety.
- (81) With respect to safety, the fourth paragraph of section 1.1 of the relevant Community guidelines points out that, 'There is also at present cyclical and structural overcapacity which means that the industry is demanded and that shippers can drive down freight rates; this, combined with high fixed costs for shipowners, means that the incentive to cut costs and possibly corners increases and the pursuit of high quality in operations may not be commercially attractive. This may then undermine the long-term interests of the Community in safe, efficient, environmentally friendly transport.'
- (82) The second paragraph of Chapter 5 of the guidelines states the Commission's reluctance to approve subsidies for fleet renewal, except where such aid is part of a structural reform leading to reductions in overall fleet capacity. However, the Italian scheme does not explicitly require reduction of capacity.
- (83) However, according to the fourth paragraph of Chapter 5 of the guidelines, 'aid may however be permitted, in the line with the Community safe-seas policy⁽²³⁾, in certain restricted circumstances (...) to promote the use of safe and clean ships.' Incentives may be permitted 'to upgrade

Community-registered ships to standards, which exceed the mandatory safety and environmental standards laid down in international conventions and anticipating agreed higher standards.'

- (84) The Italian aid scheme is not specifically targeted at renewing the tanker fleet but rather at launching a process that will improve levels of safety and environmental protection by removing a great number of high-risk tankers from the market. The objective of the aid scheme, expediting the phasing-out of single-hull tankers, particularly older ones, is in line with Community objectives following the Erika disaster. The Italian aid scheme promotes, and anticipates, the achievement of Community objectives by increasing and anticipating protection against the risks stemming from the use of older ships which meet lower technical standards.
- (85) In addition, by bringing forward the timescales and encouraging the scrapping of single-hull tankers more than 20 years old in preference to selling them to other Member States or to third countries, the scheme helps to make seas outside Community waters safer too. It thus definitively removes 67 of the most high-risk tankers from operation anywhere in the world.
- (86) The Commission notes, furthermore, that the scrapping of tankers under the Italian aid scheme goes further than the IMO compromise and the Community standards set out in the Commission Communication on the safety of the seaborne oil trade and in Regulation (EC) No 417/2002, with respect to single hull tankers.

The Italian scheme promotes the scrapping of single-hull tankers with deadweight tonnages of less than 5 000 tons (some 31 single-hull tankers) and gives incentives for scrapping other (larger) single-hull tankers that were at least 20 years old on 31 December 1999. This anticipates the IMO and Community timetable by a considerable period of time, as the first tankers were scrapped as early as January 2000.

- (87) The aid scheme was devised, discussed with potential beneficiaries, presented to and adopted by the Italian Parliament before Regulation (EC) No 417/2002 came into force, even if, as has been reported above, no aid has been awarded pending the Commission's approval. It can thus be regarded as a one-off interim arrangement to regulate a situation of legal uncertainty, in a period during which, however, the potential risk and the effects of a catastrophe similar to the Erika disaster were already well known. The aid was, and is, necessary in order to achieve the objective of phasing out single-hull tankers ahead of schedule since, without compensation for the loss of revenue, shipping companies would have no incentive for removing dangerous and polluting tankers from operation. The additional conditions agreed to by the Italian authorities and ordered by the Commission in this decision will further restrict the use of single-hull tankers.

(23) A common policy on Safe Seas, COM(93) 66 final.

- (88) The aid in question is a scrapping premium necessary to remove from operation tonnage representing the greatest risks to safety and to the maritime environment. Thanks to the conditions attached to the scheme, the aid reduces risky and polluting capacity and ultimately encourages the use of safer tankers. Negotiations at Community and international level had precisely that objective. It can therefore be confirmed that the objectives pursued by the Italian aid scheme are in line with the common transport policy.
- (89) It is in the Community's interest to adopt measures to reduce risky and polluting capacity. Although the present aid scheme concerns only a limited number of the oldest of such tankers in a single Member State, and although the beneficiaries which own several single-hull tankers more than 20 years old may continue to use those for which they do not receive the aid (at least, until their use is banned by IMO and/or Community regulations), it is clear that every single demolition of unsafe vessels ahead of the schedule laid out in Community legislation counts towards achieving the final objective of safer seas.
- (90) Beneficiaries are free to use the aid on expenditure related to their maritime business. By imposing conditions limiting the use of single-hull tankers, the Italian authorities are influencing the financial decisions of the shipping company with regard to future investment and, potentially, replacement capacity, thereby improving environmental and safety conditions in Italian and, indeed, in international waters. Other forms of expenditure (crew training, for example) are regarded as meeting the criterion of a maritime business investment.
- (91) In view of the above and since the granting of aid will be made subject to the application of a number of strict conditions imposed by the Commission through the present decision, which will in particular prevent any overcompensation, the Commission considers that the aid measure favours the development of a specific sector (safer maritime transport) without being contrary to the common interest and therefore complies with Article 87(3)c and also with the Community guidelines on State aid.
- 4.3.2. *Compatibility with legislation on shipbuilding*
- (92) The third paragraph of Chapter 5 of the relevant Community guidelines requires that aid approved under it must comply with the provisions of Council Regulation (EC) No 1540/98 of 29 June 1998 on aid to shipbuilding⁽²⁴⁾. In that respect, the following observations can be made, taking account also of the information provided by the Italian authorities during the procedure under Article 88(2).
- (93) The aid is aimed exclusively at offsetting the loss of revenue (and any additional costs incurred) by the shipowner as a result of ceasing to use the single-hull vessel which has been scrapped. It should also be noted that the Commission imposes certain conditions in this decision in order to prevent overcompensation. Moreover, Italy has stated that it will consider any spillover of the scrapping aid (limited to compensation for lost revenue) to the shipbuilding market as automatically ineligible under the present aid scheme.
- (94) In the light of the conditions imposed in this decision it cannot be concluded that the aid qualifies as indirect aid to shipbuilding within the meaning of Council Regulation (EC) No 1540/98/EC.
- 4.4. **Description of the measures to be taken by Italy and the conditions imposed in this decision to make the aid compatible**
- (95) In its decision to open the formal investigation procedure, the Commission expressed doubts about the compatibility of the aid because there were no clear conditions regarding the potential use of the aid. The amounts of aid awarded under such schemes must be strictly monitored to ensure that they are spent in compliance with Community policies and rules on State aid. The amounts of aid must be limited to the strict minimum necessary to achieve the desired effect.
- 4.4.1. *Proportionality of the aid amount*
- (96) The aid is calculated on the basis of deadweight tonnage, since this correlates best to the potential pollution risk. The Commission may agree to this method of calculation provided that it is applied in a proportional way. At the time of the decision to open the formal investigation procedure, the Commission expressed concerns on this point, which were confirmed by the comments from the interested parties.
- (97) The Commission acknowledges that a scrapping premium should provide sufficient incentive to accomplish the scrapping as early as possible, and that the aid in question is necessary in order to achieve the scrapping of tonnage considered to be high-risk before the shipowner has replaced it with less risky, environmentally safer capacity. However, the Commission insists that the basis for calculating the aid must be limited to compensation for loss of revenue during the actual time period during which such loss is suffered. Without such a link, the aid amount may not be considered proportional to the actual compensation of the losses suffered because it could spill over to other economic interests of the shipping company perhaps not in line with the objective of Community policy.

(24) OJL 202, 18.7.1998, p. 1.

(98) Accordingly, the present aid scheme should be implemented in a way which eliminates the risk of an aid recipient benefiting from aid despite the fact that compensation for loss of revenue is no longer necessary, either because the shipping company had already arranged for replacement capacity within a period of less than a year, or because the scrapped tanker would have anyhow had to cease operating before the end of one full year in accordance with Regulation (EC) No 417/2002 of 8 February 2002. A report must be presented to the Commission setting out in detail, for each beneficiary and vessel, the method used to calculate the amount of aid. The Commission reserves the right to submit the information regarding individual aid amounts to third parties, in particular, experts, for their opinion. This report, and further reports which the Commission may request from Italy on the implementation of the aid, must also include information on the total tonnage owned by the beneficiary before the granting of the aid and throughout the year following the granting of the aid.

4.4.2. *Non-discriminatory and transparent application*

(99) Further conditions should be added in order to guarantee greater transparency and non-discrimination, and to provide for the possibility of appealing against the decision on the amount of the aid. The Commission is aware that the aid scheme appears to allow the Italian authorities a certain margin of discretion with regard to taking into consideration the technical standards of the tanker to be scrapped. Accordingly, further conditions must be complied with when applying the aid scheme in order to ensure the necessary transparency, non-discrimination and legal certainty.

4.4.3. *Compliance with objectives of maritime policy*

(100) With regard to the conditions on the subsequent investment of the aid in the maritime business of the shipping companies concerned, the latter are free to choose the form of investment they think necessary, so long as it is considered in line with the Community's maritime policy. This may be deemed acceptable, but it is however indispensable that aid recipients are restricted in their choice concerning the purchase of replacement capacity, whether by new or second-hand tankers. In view of the Community's maritime policy and legislation on the phasing-out of single-hull tankers, the Commission considers it important to insist that the condition governing investment does not permit any purchase of single-hull tankers by beneficiaries.

(101) In the course of these proceedings, the Italian authorities already committed themselves to specifying further conditions regarding the purchase of single-hull tankers as indicated above, offering to make it a condition that, in relation to the obligation of aid recipients to further invest in their maritime business, the purchase of single-hull ships would not be considered an admissible investment under the aid scheme. It offered to impose that in relation to the obligation of aid recipients to further invest in the maritime business that the purchase of single-hull ships would not be considered an admissible investment under the aid scheme.

4.4.4. *Cumulation requirements*

(102) Italy is also reminded of the cumulation rule contained in paragraph 2 of Chapter 10 of the guidelines on State aid to maritime transport, which states: 'A reduction to zero of taxation and social charges for seafarers and of corporate taxation of shipping activities is the maximum level of aid which may be permitted. To avoid distortion of competition, other systems of aid may not provide greater benefit than this. Consequently, although each aid scheme notified by a Member State will be examined on its own merits, it is considered that the total amount of aid in the form of direct payments in the framework of Chapters 3, 4, 5 and 6 should not exceed the total amount of taxes and social contributions collected from shipping activities and seafarers; to do so would, it is considered, affect trading conditions to an extent contrary to the Treaty provisions, as the aid would be disproportionate to the objective.'

4.4.5. *Cabotage market*

(103) Although Italy confirms that its cabotage market is open in compliance with Council Regulation (EEC) No 3577/92, the exceptionally high number of Italian ships in this market gives cause for concern. A certain imbalance also derives from restricting access to ships in the registers of other Member States, whereas ships registered in the second Italian register may not only operate in this market but may also benefit from the aid. The Commission therefore considers it necessary to monitor this issue closely with the help of detailed information provided to it by the Italian authorities during the coming five years.

4.5. **Legal application of the aid scheme**

(104) Prior to introducing a formal proposal for what later became Law 51/2001 to the Italian Parliament on 16 March 2000, the Italian Government and industry had already agreed on the conditions for the granting of the aid and had already identified eligible tankers. The aid measure based on a political agreement in substance was therefore already being applied. It is however true that no loan obligations seem to have been transferred to the Italian government, which would constitute the actual granting of the aid. On account of the large expectations raised and the actual reaction of the market to it, the Commission considers that the aid measure was however being applied prior to its authorisation, already in January 2000 and prior to its adoption in March 2001. However, the Commission accepts that this course of action by the Italian authorities was probably inevitable in the wake of the Erika disaster and in order to induce the beneficiaries to scrap the vessels as early as possible.

5. CONCLUSION

(105) The Commission finds that Italy has unlawfully implemented the aid for the scrapping and renewal of the Italian oil tanker fleet in breach of Article 88(3) of the Treaty. However, assessment of the measure has shown that the aid may be declared compatible with Article 87(3)(c) of the EC Treaty provided that it is adapted in line with the conditions established by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The aid, provided for under Law 51/2001, which Italy has implemented for the benefit of the Italian oil tanker fleet, amounting to EUR 77,4 million as a total budget including interest, is compatible with the common market, subject to the conditions set out in Articles 2 and 3 of this Decision.

Article 2

1. In addition to the procedures proposed by Italy, individual aid amounts must be calculated in a transparent way based on objective criteria, as specified in particular in paragraphs 2 to 6.

2. The calculation of the aid amount must to be limited to the minimum necessary.

Account is to be taken, in line with the conditions of this aid scheme of the actual period during which an aid recipient has suffered loss of revenue due to the scrapping of a tanker.

3. The Italian authorities must provide the Commission in particular with detailed reports for each beneficiary and vessel, regarding the method of calculation and the amount of tonnage in the beneficiary's possession during a period of at least one year after the granting of the aid.

The first report is to be forwarded within two months of the notification of this Decision.

4. Before the scheme may be implemented fully, any margin of discretion concerning the choice of eligible vessels and the extent to which they may benefit from this scheme has to be eliminated.

5. The calculation of the individual aid amounts has to be made public to all aid recipients.

6. Individual aid recipients and companies which have applied for aid need to be granted the possibility to appeal.

Article 3

1. The obligation regarding investment in maritime business has to comply with maritime policy objectives. In particular, therefore, beneficiaries are not permitted to purchase single-hull tankers.

2. The overall aid received by a company benefiting from the present aid may not exceed the limit imposed by paragraph 2 of Chapter 10 of the guidelines on State aid to maritime transport.

3. During a period of five years as of 2003, Italy has to inform the Commission on a yearly basis of detailed developments in the Italian tanker cabotage market for the transport of oil, oil products and chemicals.

Article 4

Aid already granted but which does not comply with the conditions referred to in Articles 2 and 3 has to be recovered.

Article 5

The Italian authorities shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 July 2002.

For the Commission
Loyola DE PALACIO
Vice-President